IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 479 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ZINNATBEN USMANKHAN NAGORI

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Revision Application No. 479 of 2001
MR LR PATHAN for Petitioner No. 1
MR HH PATEL PUBLIC PROSECUTOR for Respondent No. 1
..... for Respondents No. 2-4

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 17/10/2001

ORAL JUDGEMENT

#. Heard learned advocate Mr.L.R.Pathan, for the applicant. This Revision Application is filed by the original complainant of the Sessions Case No.124/1997 pending before the Court of Additional Sessions Judge, Mehsana. As per the brief facts of the case, a complaint came to be filed by one Zinnatben Usmankhan Nagori on 27.7.1996 before the police wherein six persons were named in the incident while 3 other persons were alleged to have been involved but were not identified by the complainant. But, for one accused the description of eye was mentioned in the complaint. The police filed charge-sheet against the accused named in the complaint but did not perhaps either investigated or filed charge-sheet against 3 other persons not named in the complaint and, therefore, while the deposition of the complainant was recorded at Ex.29, the complainant deposed that three persons mentioned as unidentified persons and description of eye of one person was given in the complaint, were the persons named as Mahebub Husainbhai, Idrish Ismailbhai and Isufbhai Bombaywala, which according to the deposition of the complainant she could know afterwards and hence an application under Section 319 of the the Criminal Procedure Code was moved by the complainant before learned Additional Sessions Judge to arraign these 3 persons viz. Mahebub Husainbhai, Idrish Ismailbhai and Isufbhai Bombaywala, as accused in Sessions Case No.127/1997. Application was preferred at Ex.54 on 3.8.2001. The said application came to be rejected by learned Additional Sessions Judge, Mehsana on 27.9.2001 stating that the identification parade of 3 unidentified persons was not done, during the investigation. Complainant in the deposition says that the names of such 3 persons who are sought to be arraigned as an accused were known to her afterwards. The learned Additional Sessions Judge has also observed that how the complainant came to know about these names has not been disclosed by her and, therefore, the learned Additional Sessions Judge came to the conclusion that there was no prima facie evidence to arraign the 3 persons named in the deposition as an accused in the said Sessions Case under Section 319 of the Criminal Procedure Code and, hence, this Revision Application by original complainant.

#. Learned advocate Mr.L.R.Pathan has contended that in complaint a description of persons who were not identified was given, and in deposition vide Ex.29 names

of these 3 persons was given by the complainant, and according to Mr.Pathan this was sufficient evidence to arraign those 3 unidentified persons named in the deposition as an accused in the Sessions Case. Learned advocate Mr.Pathan has relied upon 3 authorities of the Supreme Court in the matter of Raghubans Dubey Vs. State of Bihar, reported in A.I.R. 1967 Supreme Court 1167, in the matter of Rakesh Vs. State of Haryana, reported in (2001) 6 Supreme Court Cases 248 and in the matter of Joginder Singh Vs. State of Punjab, reported in A.I.R. 1979 Supreme Court 339. It was vehemently contended that the police did not investigate about these unidentified persons nor they were shown in the necessary column of the charge-sheet to be the persons accused and not found. It was also vehemently urged that according to the Supreme Court decisions the evidence includes not only the investigation but the evidence recorded by the Court is also included in evidence as envisaged under Section 319 of the Criminal Procedure Code. It was urged that in deposition before the learned Sessions Judge the complainant has named 3 persons who were not identified at the time of incident and their names were not given in the complaint but complainant has on oath now disclosed the names of those 3 persons and they are required to be arraigned as accused. It was urged that, therefore, the order of the learned Additional Sessions was wrong and erroneous and requires interference of this Court.

#. Considering the record available and the contentions raised on behalf of the applicant and having regard to the principle laid down by the Supreme Court in the above said decisions cited, we cannot accept the arguments advanced on behalf of the applicant. True it is that the evidence includes, so far as Section 319 of the Criminal Procedure code is concerned, not only the evidence collected by the Investigating Agency, but also recorded before the Court and this is exactly what is established by the Surepme Court vide above said decision of Rakesh Vs. State of Haryana, wherein in para -13 the Supreme Court has made it clear that, "the word "evidence" occurring in sub-section (1) is used in a comprehensive and broad sense which would also include the material collected by the investigating officer and the material or evidence which comes before the Court." But, alongwith this the Supreme Court also sounded a note of caution that the Court has to come on prima facie conclusion that the person not arraigned before it, is involved in the commission of crime from the above evidence and this is the crux of the matter in this case. The fact goes to show that the persons who are sought to be arraigned as an accused in the Sessions Case are not named in the

complaint and one of them is described by his eyes and the complainant gave names of those accused in the deposition only. The trial Court was correct in saying that this is not enough evidence to conclude prima facie that those 3 persons named in the depositions were involved in the crime. There is no other evidence except the say of the complainant that she came to know afterwards the names of the above persons and, therefore, she deposed the names of unidentified persons. In my opinion, this is not a prima faice evidence to arraign citizen as an accused to face a serious sessions trial. This is not the law of this land. To arraign an accused under Section 319 of the Criminal Procedure Code is a serious matter and, therefore, the Supreme Court has in so many words expressed that the Court has to come to a prima facie conclusion from the evidence recorded that a person is involved in the crime. What is deposed by the complainant herein vide Ex.29, by no stretch of reasonings can lead to prima facie conclusion that the persons named were involved in the crime, when they are not named in the complaint, and no investigation has been done on this score. A court of law must require some more evidence, than only naming the persons in the deposition for arraigning such person as an accused and attributing their involvement in crime. A scheming complainant may involve any innocent person to face very serious sessions trial and, therefore, while the Court scrutinizes evidence under Section 319 of the Criminal Procedure Code, a careful scrutiny is always required, and on careful scrutiny it is crystal clear that naming a person on the ground that the names were known to the person afterwards is the weakest kind of evidence to exercise power under Section 319 of the Criminal Procedure Code.

#. In this view of the matter, this Revision Application stands dismissed summarily.

(J. R. VORA, J.)

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